App. F. IX-4

1921.8

P-19-E

File No. 8-27

Previous References

Serial Nos. 4, 11, 17, 19

Later References

D.88-27 (1-3 & 41, 48-55)

31 (1-6)

Reserve.

General and Revenue Secretariat.

Serial Nos. four

Part B for Feby 27

SUBJECT

Default in holding the statutory meeting and filing the statutory report by the All India mutual aid and Poor Homes Association Ltd

---

3022

App. F. III—2]

General and Revenue Secretariat: File No. 8 of 1927.

Serial No. 4

Letter No C 366/27-28 d 3-10-27 from the Registrar of J.S. Co. Stating that the All-India Medical Aid & Poor Houses Association Ltd, Should have held its Statutory Meeting before the 23rd Sept 1927 & Send its Statutory Report to this office to day before the 23rd Sept-1927 as required by Sec 77 of the Companies Regln & requesting in the circumstances mentioned legal advice as to whether, when no Meeting is held at all, the officers of the Company will be liable to be prosecuted for not Sending the Statutory Report to this office.

Secty's order on the p. cand. —

1) To Counsel: Legal Remembrancer

Sd) M. R.
4-10-27

2) Secbd.

9/10/27

3) Law Secy)

9.10.27

4) It is difficult to limit prosecution under Sec 77(6) unless the prosecution is able to prove that the Director has knowingly & wilfully authorised or permitted a default.

5) The onus is on the prosecution to prove this as a fact. If the Registrar

NOTE—Contn. sheet.

WD-0321—GPB—60,000—24-5-27

General and Revenue Secretariat. GS. File No. 8 of 1927.

Serial No.

is incapable to discharge this burden a prosecution may be launched.

6) Dir Secy with compts

8.11.27

7) Please put up draft

2.11.27

8) Draft Secy.

2.11.27

9) Secy

5.11.27

10) Finance

11) 3rd Member

8.11.27

12) I see no harm in prosecuting. The Company cannot plead ignorance as the Registrar has reminded them. Whether the illness of one Director is sufficient justification for the omission a matter for the court to decide

13) Put up under my

17.11.27

NOTE—Contn. sheet.

GEN. & REV. SECRETARIAT. 28 OCT. 1927 DEVELOPMENT BRANCH.

OFFICE OF THE IND MEMBER OF COUNCIL 8 NOV. 1927 No. 4116

3022

3

App. F. III—2]

General and Revenue Secretariat. | File No. 8 of 1927.

Serial No.

14) Draft Secret.

JAM 22/11/27

15) After approval. Whether legal opinion may not also be incorporated in the draft as in the first draft put up is for orders.

16) Secy)

17) Please put up a clean draft

24.11.27

25/11/27

18) Typed draft Secret.

JAM 24/11/27

19) Secy D)

20) Secretariat

21) 3rd Member)

OFFICE OF THE THIRD MEMBER OF COUNCIL 3 DEC. 1927 No. 1205

3/12/27

3/12

22) Secy

6/12

23) Issue

6-12-27

Note—Contn. sheet

General and Revenue Secretariat. | Gs | File No. 8 of 1927.

Serial No. 11.

D.o. letter No D 6064 dt 8-12-27.

To. The Registrar of Js. Cos

With refce to Sl 4 States that he may prosecute the Officers of the Company under Section 77 of the Companies Regulation 4 that it would properly be a question for the Court to decide whether the illness of one Director is a sufficient justification for default in publishing the Statutory Report.

GEN. & REV. SECRETARIAT. 41-27 12 DEC. 1927 DEVELOPMENT BRANCH.

From the
The Registrar of Joint Stock Companies
No C 366/27-28 dt 21-1-28.
States that he agrees with the Government Advocate that a prosecution does not lie in this case and Solicits further instructions as to whether a prosecution may be launched

Orders of the Hond Member
Law Secretary with Compliments"
(Sd) K.M.
21-1-28.
The file is placed below.

Sec' Law Dept)

WP
24/1/28

I agree with the Govt Advocate. I was under the impression that there was a default in not forwarding a report within 10 days of the meeting as provided in Sub-Sec 2 of Sec 77. But I find that there has been default in holding the Statutory meeting under Sub-Sec 1 of Sec 77.

NOTE—Contn. sheet

WD 0324—GPB—60,000—21-5-27

6094/3609/8 5

App. F., III—2]

General and Revenue Secretariat. File No. 8 of 1927.

Serial No.

Apparently there is no penalty for not holding the Statutory meeting under Sec 77(1) except that the Co is liable to be wound up by the Court under Sec 162 cl ii.

[See 1917. 41 I. C. 1008]

Hence no prosecution lies —

GEN. & REV. SECRETARIAT 3 - FEB. 1928 DEVELOPMENT BRANCH.

Sec Ltr with Comp[ts] }

8/V

8 A 2.2.1928

Please put up a letter in Aspersen in the one forwarding issued that as there is no penalty prescribed for omission to hold the Statutory meeting, a prosecution needed not be launched

WD 4.2.28

WD 4/V

A draft D.O. to the Registrar of Joint Stock Companies, is submitted for approval

CBR 6/2/28

Sec DJ Dft for appl WD 6/V

OFFICE OF THE THIRD MEMBER OF COUNCIL. 7 FEB. 1928 No. 7556.

6/V 3rd Member.

WD 7.2.28

WD 7/V

7/2 Issue

WD 8.2.28

WD 8/V

NOTE—Contn. sheet.

WD 0824—GPB—60,000—24-5-27

6094

6

App. F. III—2]

General and Revenue Secretariat. | J.S. File No. 8 of 1927.

Serial No.	
19	To The Regr. of J.S. Coys. D: 8306 dy 8.2.28 States that in supersession of this office letter No. D: 6067 dt: 11 that as there is no penalty prescribed for omission to hold the statutory meeting, a prosecution need not be launched

"B"

GEN. & REV. SECRETARIAT,
10 FEB. 1928
DEVELOPMENT BRANCH,

NOTE—Contn. sheet.

WD 0321—GPB—60,000—24-5-27

Council Legal Remembrancer

IN REPLY PLEASE REFER TO
No. C 366/27-28
ENCL. -

4107

GOVERNMENT OF MYSORE.

1

3022

GEN. & REV. SECRETARIAT
5 OCT. 1927
DEVELOPMENT BRANCH.

Office of the Registrar of Joint Stock Companies in Mysore.

Dated, Bangalore...3rd October.....1927.

FROM

S.P.Rajagopalachari, Esq.,B.A.,B.L.,
XXXRXXHXYXGXXRXXXXXIXEXXXXXXXXXX,
Registrar of Joint Stock Companies in Mysore,
Bangalore.

To

J.S. 8-27-4

N.Rama Rao, Esq.,B.A.,B.L.,
Secretary to Government of His Highness
the Maharaja of Mysore, Development Departments,
Bangalore.

Subject :- Default in holding the statutory meeting and filing the statutory report by the All-India Mutual Aid and Poor Houses - Association, Ltd.,

Sir

The Company became entitled to commence business on 23rd March - 1927 and should, therefore, have held its statutory meeting before the 23rd September 1927 and sent the statutory report to this Office 10 days before the 23rd September 1927 as required by Section 77 of the Mysore Companies Regulation. But the Secretary reported in his letter No.3612 dated 26th September 1927 that the meeting could not be held as the Chief Organizer has been ill for some time and in consequence thereof, the statutory report could not be prepared. He, therefore, requested that time might be granted to the Company till the end of next month for submitting the report and for holding the meeting. I have intimated to him that there is no provision in the Mysore Companies Regulation for the extension of time asked for and that - the Officers of the Company must take the consequences resulting from the violations of the provisions of the Regulation.

2. In this connection, I beg to state that no penalties are prescribed in the Regulation for the default in holding the statutory meeting. But Section 77 (6) prescribes penalties for default in sending the statutory report to the members and to this Office at least 10 days before the day on which the meeting is held as required

Subsections 2 and 5 of Section 77 I request that legal advice may kindly be obtained and sent to me as to whether, when no meeting is held at all,-the Officers of the Company will be ~~held~~ liable to be prosecuted for not sending the statutory report to this Office.

I have the honour to be;

Sir,

Your most obedient servant,

Assistant Commissioner
for Registrar. of Joint Stock Companies
absent from Head-quarters.

A. P. F. VI. G[illegible]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *192*

Date of issue.....

Signed by.....

List of enclosures.....

Copied by .....

Examined by .....

Section 7.S.

File No. 8. 27.

Serial No.

No. .

To The Registrar of J.S. Cos

Sir

With Reference to your letter No C 366-27-28 D 3.10.27 requesting legal advice as to whether the officers of the All India Mutual Aid & Poor Houses Association Ltd would themselves liable for the penalties prescribed in Section 77 of the Companies Regln for default in sending the Statutory Report, I am directed to state that ~~the legal opinion is to~~ first are advised that it is

over

WDO 825—GPB—30,000—26-5-27

difficult to sustain a prosecution under Secty 44 (6) unless the prosecutor is able to prove as a fact that the Director has knowingly & wilfully countenanced or permitted a default.

~~The onus is on the prosecutor to prove this as a fact~~ I am accordingly to state that in the circumstances of the present case, you feel ~~you are able to discharge this~~ reasonably sure of being able to prove a prosecution may be launched.

I have &c.

for Secty to Govt,
Dev Deptt.

Nov 2
4/11/77

Confidential. 5

Dear Sir,

With reference to your letter No.C 36
-27-28 dated 3rd October 1927 requesting leg
advice as to whether the officers of the All
India Mutual Aid and Poor Houses Association
ltd., make themselves liable for the penalti
prescribed in section 77 of the companies
Regulation for default in sending the statu-
tory report, I am desired to state that -
Government think that you may prosecute the
officers of the Company under the said sectic
The prosecution will no doubt have to prove
that the officers have knowingly and wilfully
authorised ~~as~~ or permitted default; but in this
case, ignorance cannot be pleaded as you have ac-
tually intimated to the Secretary, the conse-
quences of non-compliance with the provisions
of the Regulation.

I am to state that it would be properly a
question for the Court to decide whether in
the circumstances the illness of one Director
is a sufficient justification for default in
submitting the statutory report.

Yours Sincerely,

To

The Registrar of Joint Stock Companies.

NOD. 6067 18-12-27
J.S. 8-27-11

A. F. F. VI. G[illegible]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *192*

Date of issue.....

Signed by.....

List of enclosures.....

Copied by .....

Examined by .....

Section 18.

File No. 8 27.

Serial No.

No.

To Confidential.

Dear Sir

With reference to your letter No C 366-27 28 & 3-12-27 requesting legal advice as to whether the officers of the All India Mutual Aid and Poor Houses Association ltd make themselves liable for the penalties prescribed in Section 47 of the Companies Regulation for default in sending the Statutory Report I am desired to state that-

over

WD0325—GPB—80,000—26-5-27

Yours
Sir Solicitors in prosecuting think that you can
prosecute
the officers of the Company

under the said Section ~~they~~ in this case, insurance account to be pleaded
Company, ~~Council for ignorance~~ as ~~they have been~~ in the case
~~in the matter~~.

The prosecution will endeavour to prove that the officers have knowingly & wilfully authorised or permitted default; but ~~of the Act. Non statutory~~ responsible & punishable except

As you have actually the case intimated to me the consequences of the non compliance with the provisions of the Regn

I am to state that if proper for the Court to decide
whether ~~in the circumstances~~ the illness of one Director
is a sufficient justification for default in subg the
Statutory report
~~the omission in a matter for~~
~~the court to decide~~

Yours Sincerely

Dr
24/11

JSV
22/11/27.

To

The Registrar of Jt. Cos

Yours

Govt Dept may have ~~in~~ prosecuting think that you can prosecute

the officers of the Company

The prosecution will undoubtedly be against officers

under the said Section ~~Thus~~ in this case, ignorance assumed (explained) Company, Council plead ignorance) of the Act. tion statutory

as ~~they have been reminded~~ in this case responsibility & permitted default

in the matter. ~~by~~ You have actually the fact circulated & drawn the consequences of with the non compliance provisions of the Regn

I am to state that it is proposed to give in the matter for the Court to decide

whether ~~the illness of our Director~~ is a sufficient justification for default in subg the statutory report

~~the omission is a matter for the Court to decide~~

Yours Sincerely.

Dft
24/11

NSV
22/4/87.

Y

The Registrar of J.S. Co.

3609
P 82

OFFICE OF THE REGISTRAR OF JOINT STOCK COMPANIES
21 JAN. 1928
No. 6959

D.6094

D. O. No. C 366/27-28

CONFIDENTIAL.

OFFICE OF THE REGISTRAR OF
JOINT STOCK COMPANIES IN MYSORE.

Bangalore, 21st January 1928.

9 S. 8- 27- 17

Dear Sir,

DEVELOPMENT BRANCH

May I invite reference to Development Secretary's D.O.No.D.6067/J.S.8-27-11 dated 8th December 1927 stating that the officers of the All India Mutual Aid and Poor Houses Association, Ltd., may be prosecuted under Section 77 of the Mysore Companies Regulation ? Under the instructions of Mr.C.S.Balasundaram Iyer, the 3rd Member with whom I discussed the subject, I consulted the Government Advocate as to the maintainability of the prosecution, under Section 77. A copy of his reply is herein enclosed. He has expressed the opinion that a prosecution does not lie in this case and after carefully considering the matter, I am inclined to agree with him. In the above circumstances, I solicit further instructions

ions as to whether a prosecution may be
i.

copy of the letter since received from
cretary of the company in this connection
o herein enclosed for kind perusal.

Yours Sincerely,

K.Matthan, Esq., B.A.,
Third Member of Council.

Copy of D.O.No.523 dated 17th January 1928 from - Mr.K.Shankaranarayana Rao, Government Advocate, to the Registra of Joint Stock Companies in Mysore.

****

With reference to your D.O.letter No.C.366 dated the 23/24th December 1927, I write to state that I have very carefully considered the question referred to me for opinion and I am afraid we cannot take any action against the officers of the Company for the delay in sending the Statutory Report.

2. It is clear from a perusal of Sec.77 of the Companies - Regulation that no penalty is provided for not holding the Statutory Meeting or for not filing the Statutory Report within 6 months from the date of commencement of business, the only risk that the Company runs being that it may be wound up by the Court. (Vide Sec.162 (ii)).

3. A penalty is, however, prescribed for not filing it before the Registrar or not forwarding it to the Shareholders, at least 10 days before the date of the Meeting. In the present case the officers appear to have taken care to comply - with the above condition, though the Report itself has been filed and the Meeting is going to be held beyond the 6 months prescribed.

4. Under these circumstances the action of the officers of the Company cannot be said to amount to a default in complying with the provisions of Sub Section (2) or Sub Sec. (5) of Sec.77. Such penal provisions have to be construed very - strictly and no prosecution can lie.

5. The papers received with the letter under reference are enclosed.

----ooo----

Registrar.

No.3836 dated 10/11th October 1927 as also to the copy of the Statutory Report submitted therewith, you will see that not only the copies of the said report were duly sent to the shareholders 15 days (instead of 10 days) before the meeting was held but also a copy of the same was filed with you immediately thereafter.. ..

In these circumstances, we beg to request that you will be pleased to see that no action is taken against the directors but an acknowledgement is sent to us, at your earliest convenience. Anyhow, we beg to be kindly excused for the trouble and thank you in anticipation.

****

Registrar.

P. F. VI. GI]

12

SUBJECT..... Comp

.....

.....

Section J.S.

File No. 8.

Serial No. 19

No. D 8306

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *192*

To S. P. Rajagopalachar Esq. B.L.
B.L.,
Registrar of Joint Stock
Companies, in Myso

Date of issue..... 9/2/28

Signed by..... M. N. Ramachar

Dear Sir,

With reference to your D.O. letter No C 366/27-28 of the 21st ultimo, soliciting further instructions as to whether a prosecution may be launched against the officers of the All India mutual Aid & Don Houses Association Ltd, I am desired to State in supersession of

List of enclosures.....

Copied by .....

Examined by .....

over

W1X325—GPB—30,000—26-5-27

Copy of ~~the~~ letter No.222 dated 19th January 1928 from the Secretary of the All India Mutual Aid and Poor Houses - Association, Ltd., to the Registrar of Joint Stock Companies in Mysore, Bangalore.

****

Subject: Statutory Report.

With reference to the correspondence ending with this office No.30 dated 2nd instant requesting you to kindly cause the acknowledgement sent for our having filed with you a copy of the Statutory Report of the Association with this office - No.3836 dated 10/11th October 1927, we regret to bring to your kind notice that not only we have not yet been favoured with - the said acknowledgement though it is more than three months - since we submitted the same but also we hear that it is under contemplation to take action against the directors of the Association for having violated the provision of section 77 of the Mysore Companies Regulation in not holding the Statutory meeting within six months from the date ~~of~~ when the Association became entitled to commence business, though we in our letters Nos. 3612 and 3627 dated 26-9-27 and 1-10-27 respectively submitted to you the reason for the non-compliance with the provision of the said section in time and also the directors having not violated the said provision knowingly and wilfully.

In this connection, we beg to invite your kind attention to sub-section 6 of ~~the~~ section 77 of the Mysore Companies Regulation, in which you will see that the Directors will become liable to penalties only when they don't send the copies of the Statutory Report 10 days at least before the Statutory meeting is held or when a copy of the said report is not filed forthwith by them with the Registrar in contravention of sub-section 2 and 5 of section 77 but for not holding the Statutory meeting within six months from the date of commencement of business. So, if you kindly refer to our letter No.3836 dated